Civil Works-Superfund Integration: Equitable Cost Sharing for Degraded Urban Rivers

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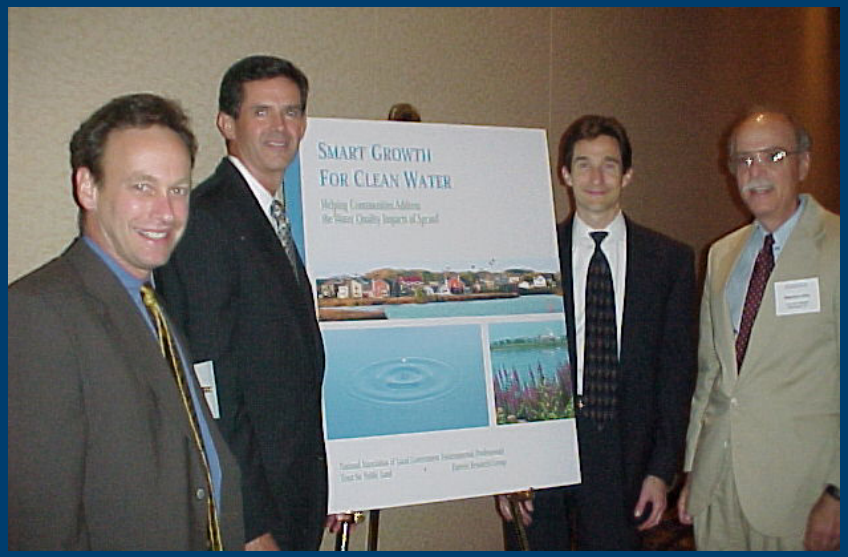
Seventh International Conference on Remediation of Contaminated Sediments, Dallas, Texas
February 5, 2013

Urban Rivers Restoration Initiative: What is It? - 1

- 2002, 2005 and 2006 MOUs between USACE and EPA
- Eight pilot projects
- Interagency, intergovernmental program



Urban Rivers Restoration Initiative: What is It? - 2

- Cooperative project planning with stakeholders
- Integrated Planning Model
- Feasibility report to Congress
- Portfolio of solutions

CERCLA/URRI Comparison - 1

CERCLA

- Hundreds of PRPs ⇒ extensive litigation
- Discrete geographical focus
- Continuing pollution
- Money consumed by transaction costs

URRI

- Cooperative partnerships
- Watershed approach
- Source reduction
- Money directed to solutions

CERCLA/URRI Comparison - 2

CERCLA	URRI
• Political problems associated with municipal PRPs	• Broad-based political support
• Resource shortages	• WRDA/E&WD approach
• Strict, joint, several, and retroactive liability	• Equitable cost sharing

WRDA-CERCLA Integration

- COE WRDA public works & EPA CERCLA processes
- Public works: reconnaissance, feasibility, ROD, PED, construction
- CERCLA: PA/SI, RI/FS, ROD, RD/RA

How Do URRI & CERCLA Interact? – 1

- URRI is not a substitute for CERCLA
- URRI is a process that co-exists with the CERCLA NCP process
- The site goes through the traditional NCP process
- During the RIFS, the WRDA process runs on a parallel track

How Do URRI & CERCLA Interact? – 2

- After the RIFS, the Proposed Plan and ROD are issued as usual for a CERCLA site, but the ROD contains a contingent remedy for the WRDA funded alternative
- If WRDA funding does not occur, the ROD requires the traditional CERCLA remedy
- The RD/RA Consent Decree tracks this process

What is the Water Resources Development Act (WRDA)?

- Provides programmatic and project authorities to the Corps of Engineers
- Normally enacted on a two-year cycle, with some exceptions; most recent WRDA was enacted in 2007; next one is expected in the next Congress
- Federal law that could authorize a WRDA Restoration Project at partial public expense, leading to termination of PRP liability

Examples of WRDA Authorizations – WRDA 07

- Louisiana Coastal Area - $2.053 billion
- Indian River Lagoon FL - $1.365 billion
- Morganza to GOM, LA - $886 million
- Craney Island Expansion, VA - $712 million
- Picayune Strand, FL - $375 million
- Great Egg Harbor, NJ - $256 million
- East St. Louis, IL - $208 million

What is the Energy & Water Development (E&WD) Act?

- Provides annual appropriations:
  - Department of Energy
  - U.S. Army Corps of Engineers
  - Bureau of Reclamation
- FY 2012 appropriations:
  - Overall bill: $32 billion
  - Corps of Engineers: $5 billion
  - Corps of Engineers construction: $2 billion

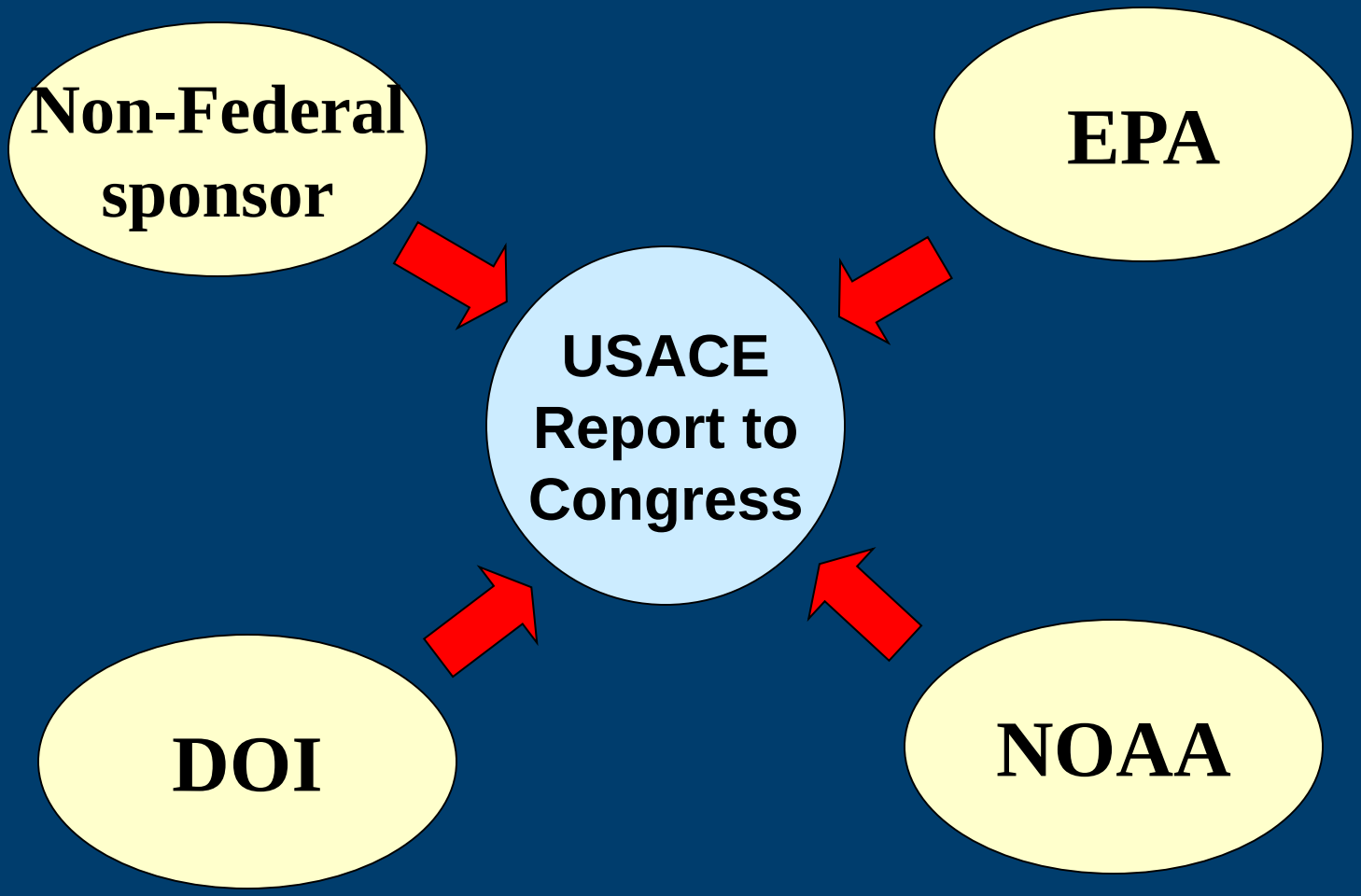
Examples of E&WD USACE Project Appropriation

- Mississippi River & trib. Project - $280 million
- Everglades Restoration - $180 million
- Herbert Hoover Dike, FL - $122 million
- Wolf Creek Dam, KY - $116 million
- Olmsted Lock and Dam, IL - $101 million

URRI Process Overview

- Corps reconnaissance study & FCSA
- Corps feasibility-level study
- PRP RI/FS
- CERCLA ROD: merger of Corps & EPA work
- Chief's report to Congress
- WRDA authorization
- Project Partnership Agreement
- Energy and Water Development Appropriations

Report to Congress



URRI-Relevant USACE Authorities

- Ecosystem Restoration and Protection
- Aquatic Ecosystem Restoration
- Environmental Dredging
- Beneficial Use of Dredged Materials
- Commercial Navigation
- Flood Control/Shore Protection
- Recreation
- Interagency Support

Standard WRDA Cost-Sharing

- Ecosystem Restoration - 75/25
- Aquatic Ecosystem Restoration – 65/35
- Environmental Dredging - 65/35
- Beneficial Use of Dredged Materials - 75/25
- Commercial Navigation - 90/10 to 50/50
- Flood Control/Shore Protection - 65/35
- Recreation - 50/50

URRI Cost Assignment Procedures

- Cost allocation among project purposes
- Cost sharing between federal government and non-federal sponsor
- Cost distribution among non-federal stakeholders

Issues and Challenges: Polluter Pay Policy

- Polluter pay does not mean 100%
- Municipal discharges and other non-industrial sources are a significant part of the problem
- There are many bankrupt, defunct and non-viable sources of contamination

PROJECT DEVELOPMENT PROCESS

1. Problem Perception
2. Request for Federal Action
3. Study Problem and Report Preparation
4. Report Review and Approval
5. Congressional Authorization
6. Project Implementation

USACE Planning Process

Step 1 - Problems and Opportunities
Step 2 - Inventory and Forecast Resources
Step 3 – Formulation of Alternative Plans
Step 4 - Evaluation of Alternative Plans
Step 5 - Comparison of Alternative Plans
Step 6 – Selection of Recommended Plan

Report Review and Approval

- Division submits report to Headquarters for policy and technical review
- Report sent out for public review
- Chief of Engineers considers comments and submits report to Assistant Secretary of the Army (Civil Works) – ASA (CW)
- ASA(CW) transmits report to Congress

SECTION 204/207, WRDA 1992/96

- Allows Corps to beneficially use dredged material
- Costs up to the cost of disposing of the material in the least costly manner are charged to the navigation project
- Additional costs are shared 75 percent federal and 25 percent nonfederal

SECTION 204/207, WRDA 1992/96

- Approval by the Secretary of the Army
- Requires determination that incremental costs are reasonable in relation to environmental benefits achieved
- Requires binding agreement with a nonfederal sponsor
- Funded through the standard appropriations process

SECTION 312, WRDA 1990

- Allows Corps to remove and remediate contaminated sediments outside boundaries of federal navigation channels as part of operation and maintenance of navigation projects (Section 312 (a))
- Allows Corps to remove and remediate contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement (Section 312 (b))
- Passaic cited as priority Section 312 project in statute

SECTION 312(a)

- Requires approval by Corps Headquarters
- Costs are economically justified based on future O&M cost savings and non-monetary environmental benefits
- Requires binding agreement with a nonfederal sponsor (agreement must be approved by the ASA(CW))
- Funded through the standard appropriations process – O&M

SECTION 312(b)

- Requires approval (Joint Plan) by ASA (CW)
- Justified based on non-monetary environmental benefits
- Requires binding agreement with a nonfederal sponsor (agreement must be approved by the ASA (CW))
- Funded through the standard appropriations process – Construction General

SECTION 312 COST SHARING

- Section 312(a) – cost shared as part of operation and maintenance for the navigation project
- Section 312(b) – costs are shared 65 percent federal and 35 percent nonfederal

INTERNAL CORPS GUIDANCE SECTION 312

- Corps to obtain reasonable protection from liabilities
- CERCLA hazardous substances should be documented
- Cost recovery must be consistent with “polluter pay” policy

Questions and Discussion

Acronyms

- CERCLA – Comprehensive Environmental Response, Compensation and Liability Act (Superfund statute)
- PRP – Potentially Responsible Party
- RI/FS – Remedial Investigation/Feasibility Study
- ROD – Record of Decision
- URRI – Urban Rivers Restoration Initiative
- WRDA – Water Resources Development Act